

No. ~~471~~ 10

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HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1955

THE SHOTWELL MANUFACTURING COMPANY, BYRON
A. CAIN, FRANK J. HUEBNER AND HAROLD E.
SULLIVAN, CROSS-PETITIONERS

v.

THE UNITED STATES OF AMERICA

MEMORANDUM FOR THE UNITED STATES

SIMON E. SOBELOFF,

Solicitor General,
Department of Justice,
Washington 25, D. C.

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MEMORANDUM FOR THE UNITED STATES

The primary contention in our petition for certiorari (*United States v. Shotwell Manufacturing Co.*, No. 470, this Term) is that the decision of the Court of Appeals transforms the "voluntary disclosure" policy into a trap for the Government by holding, in effect, that a taxpayer who has made only a partial disclosure and has not cooperated in good faith in a determination of his true taxes, may nonetheless obtain suppression of evidence. The conditional cross-petition would go further: it asserts that the court below erred in failing to

direct dismissal of the indictment (see Conditional Cross-Petition, pp. 18-19). While we believe that this contention is without merit for the reasons stated by the Court of Appeals, in view of its relation to the questions presented in the Government's petition for certiorari we think that the Court should review all the questions decided by the court below.

We note, however, that there may be a question as to the timeliness of the cross-petition. The Court of Appeals had under review several orders of the District Court: the denial of the motion to dismiss the indictments, the denial of the motion to suppress evidence, and the judgment of conviction. It affirmed the first, reversed the second, and did not reach the third. The defendants were aggrieved by the first part of the decision, since their claim of immunity was rejected and the indictment sustained. The defendants did not, however, file a petition for rehearing. The cross-petition for certiorari is timely only if the period within which they could seek review was extended by the Government's petition for rehearing, which challenged only that portion of the decision below holding that the motion to suppress should have been granted. Cf. *Federal Trade Commission v. Minneapolis-Honeywell Co.*, 344 U.S. 206; and see Stern & Gressman, *Supreme Court Practice*, 2d ed. (1954), p. 166; compare Brief for the Federal Trade Commission in Opposition, filed in *American Crayon*